

AMENDED IN ASSEMBLY SEPTEMBER 10, 2009

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AMENDED IN ASSEMBLY JUNE 24, 2009

AMENDED IN SENATE MAY 20, 2009

SENATE BILL

No. 188

Introduced by Senator Runner

February 18, 2009

An act to add Section 527.85 to the Code of Civil Procedure, and to amend Section 273.6 of the Penal Code, relating to temporary restraining orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 188, as amended, Runner. Temporary restraining orders: private postsecondary institutions.

Existing law authorizes any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, which can reasonably be construed to be carried out or to have been carried out at the workplace, to seek a temporary restraining order and an injunction on behalf of the employee and, at the discretion of the court, other employees, as specified. Any intentional and knowing violation of the temporary restraining order is a misdemeanor, punishable as specified.

This bill would similarly authorize any chief administrative officer of a private postsecondary educational institution, or an officer or employee designated by the chief administrative officer to maintain order on the school campus or facility, ~~whose~~ *a student of which* has

suffered ~~unlawful violence~~ or a credible threat of violence made off the school campus or facility from any individual, which can reasonably be construed to be carried out or to have been carried out at the school campus or facility, to, with the written consent of the student, seek a temporary restraining order and an injunction, on behalf of the student and, at the discretion of the court, any number of other students at the campus or facility, as specified. The bill would provide that any intentional and knowing violation of the temporary restraining order is a misdemeanor, punishable as specified. By creating new duties for local law enforcement officials and expanding the scope of an existing crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 527.85 is added to the Code of Civil
2 Procedure, to read:
3 527.85. (a) Any chief administrative officer of a postsecondary
4 educational institution, or an officer or employee designated by
5 the chief administrative officer to maintain order on the school
6 campus or facility, ~~whose student has suffered unlawful violence~~
7 ~~or a student of which has suffered~~ a credible threat of violence
8 made off the school campus or facility from any individual, which
9 can reasonably be construed to be carried out or to have been
10 carried out at the school campus or facility, may, with the written
11 consent of the student, seek a temporary restraining order and an
12 injunction, on behalf of the student and, at the discretion of the
13 court, any number of other students at the campus or facility who
14 are similarly situated.

(b) For the purposes of this section, the following definitions shall apply:

(1) “Chief administrative officer” means the principal, president, or highest ranking official of the postsecondary educational institution.

(2) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including any of the following:

(A) Following or stalking a student to or from school.

(B) Entering the school campus or facility.

(C) Following a student during school hours.

(D) Making telephone calls to a student.

(E) Sending correspondence to a student by any means, including, but not limited to, the use of the public or private mails, interoffice mail, fax, or computer e-mail.

(3) “Credible threat of violence” means a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(4) “Postsecondary educational institution” means a private institution of vocational, professional, or postsecondary education.

(5) “Student” means an adult currently enrolled in or applying for admission to a postsecondary educational institution.

(6) “Unlawful violence” means any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(c) This section does not permit a court to issue a temporary restraining order or injunction prohibiting speech or other activities that are constitutionally protected, or otherwise protected by Section 527.3 or any other provision of law.

(d) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with subdivision (a) of Section 527, if the plaintiff also files an affidavit that, to the satisfaction of the court, shows reasonable proof that a student has suffered ~~unlawful violence~~ or a credible threat of violence made off the school campus or facility by the defendant, and that great or irreparable harm would result to the student. In the discretion of the court, and on a showing of good cause, a temporary restraining order or injunction issued under this section may include other named family or household members

1 who reside with the student, or other students at the campus or
2 facility. A temporary restraining order granted under this section
3 shall remain in effect, at the court's discretion, for a period not to
4 exceed 15 days, unless otherwise modified or terminated by the
5 court.

6 (e) Within 15 days of the filing of the petition, a hearing shall
7 be held on the petition for the injunction. The defendant may file
8 a response that explains, excuses, justifies, or denies the alleged
9 ~~unlawful violence or~~ credible threats of violence or may file a
10 cross-complaint under this section. At the hearing, the judge shall
11 receive any testimony that is relevant and may make an
12 independent inquiry. Moreover, if the defendant is a current student
13 of the entity requesting the injunction, the judge shall receive
14 evidence concerning the decision of the postsecondary educational
15 institution decision to retain, terminate, or otherwise discipline the
16 defendant. If the judge finds by clear and convincing evidence that
17 the defendant ~~engaged in unlawful violence or~~ made a credible
18 threat of violence off the school campus or facility, an injunction
19 shall be issued prohibiting further ~~unlawful violence or~~ threats of
20 violence. An injunction issued pursuant to this section shall have
21 a duration of not more than three years. At any time within three
22 months before the expiration of the injunction, the plaintiff may
23 apply for a renewal of the injunction by filing a new petition for
24 an injunction under this section.

25 (f) This section does not preclude either party from
26 representation by private counsel or from appearing on his or her
27 own behalf.

28 (g) Upon filing of a petition for an injunction under this section,
29 the defendant shall be personally served with a copy of the petition,
30 temporary restraining order, if any, and notice of hearing of the
31 petition. Service shall be made at least five days before the hearing.
32 The court may, for good cause, on motion of the plaintiff or on its
33 own motion, shorten the time for service on the defendant.

34 (h) (1) The court shall order the plaintiff or the attorney for the
35 plaintiff to deliver a copy of each temporary restraining order or
36 injunction, or modification or termination thereof, granted under
37 this section, by the close of the business day on which the order
38 was granted, to the law enforcement agencies within the court's
39 discretion as are requested by the plaintiff. Each appropriate law
40 enforcement agency shall make available information as to the

1 existence and current status of these orders to law enforcement
2 officers responding to the scene of reported unlawful violence or
3 a credible threat of violence.

4 (2) At the request of the plaintiff, an order issued under this
5 section shall be served on the defendant, regardless of whether the
6 defendant has been taken into custody, by any law enforcement
7 officer who is present at the scene of reported unlawful violence
8 or a credible threat of violence involving the parties to the
9 proceedings. The plaintiff shall provide the officer with an endorsed
10 copy of the order and proof of service that the officer shall
11 complete and send to the issuing court.

12 (3) Upon receiving information at the scene of an incident of
13 unlawful violence or a credible threat of violence that a protective
14 order has been issued under this section, or that a person who has
15 been taken into custody is the subject of an order, if the plaintiff
16 or the protected person cannot produce an endorsed copy of the
17 order, a law enforcement officer shall immediately attempt to
18 verify the existence of the order.

19 (4) If the law enforcement officer determines that a protective
20 order has been issued, but not served, the officer shall immediately
21 notify the defendant of the terms of the order and obtain the
22 defendant's address. The law enforcement officer shall at that time
23 also enforce the order, but may not arrest or take the defendant
24 into custody for acts in violation of the order that were committed
25 prior to the verbal notice of the terms and conditions of the order.
26 The law enforcement officer's verbal notice of the terms of the
27 order shall constitute service of the order and constitutes sufficient
28 notice for the purposes of this section, and Section 273.6 and
29 subdivision (g) of Section 12021 of the Penal Code. The plaintiff
30 shall mail an endorsed copy of the order to the defendant's mailing
31 address provided to the law enforcement officer within one
32 business day of the reported incident of unlawful violence or a
33 credible threat of violence at which a verbal notice of the terms of
34 the order was provided by a law enforcement officer.

35 (i) (1) A person subject to a protective order issued under this
36 section shall not own, possess, purchase, receive, or attempt to
37 purchase or receive a firearm while the protective order is in effect.

38 (2) The court shall order a person subject to a protective order
39 issued under this section to relinquish any firearms he or she owns
40 or possesses pursuant to Section 527.9.

1 (3) Every person who owns, possesses, purchases, or receives,
2 or attempts to purchase or receive a firearm while the protective
3 order is in effect is punishable pursuant to subdivision (g) of
4 Section 12021 of the Penal Code.

5 (j) Any intentional disobedience of any temporary restraining
6 order or injunction granted under this section is punishable pursuant
7 to Section 273.6 of the Penal Code.

8 (k) Nothing in this section may be construed as expanding,
9 diminishing, altering, or modifying the duty, if any, of a
10 postsecondary educational institution to provide a safe environment
11 for students and other persons.

12 (l) The Judicial Council shall develop forms, instructions, and
13 rules for scheduling of hearings and other procedures established
14 pursuant to this section. The forms for the petition and response
15 shall be simple and concise, and their use by parties in actions
16 brought pursuant to this section shall be mandatory.

17 (m) A temporary restraining order or injunction relating to
18 harassment or domestic violence issued by a court pursuant to this
19 section shall be issued on forms adopted by the Judicial Council
20 and that have been approved by the Department of Justice pursuant
21 to subdivision (i) of Section 6380 of the Family Code. However,
22 the fact that an order issued by a court pursuant to this section was
23 not issued on forms adopted by the Judicial Council and approved
24 by the Department of Justice shall not, in and of itself, make the
25 order unenforceable.

26 (n) Information on any temporary restraining order or injunction
27 relating to harassment or domestic violence issued by a court
28 pursuant to this section shall be transmitted to the Department of
29 Justice in accordance with subdivision (b) of Section 6380 of the
30 Family Code.

31 (o) There is no filing fee for a petition that alleges that a person
32 has ~~inflicted or~~ threatened violence against a student of the
33 petitioner, or stalked the student, or acted or spoken in any other
34 manner that has placed the student in reasonable fear of violence,
35 and that seeks a protective or restraining order or injunction
36 restraining stalking or future ~~violence or~~ threats of violence, in
37 any action brought pursuant to this section. No fee shall be paid
38 for a subpoena filed in connection with a petition alleging these
39 acts. No fee shall be paid for filing a response to a petition alleging
40 these acts.

(p) (1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, there shall be no fee for the service of process of a temporary restraining order or injunction to be issued pursuant to this section if either of the following conditions apply:

(A) The temporary restraining order or injunction issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

(B) The temporary restraining order or injunction issued pursuant to this section is based upon a credible threat of violence.

(2) The Judicial Council shall prepare and develop application forms for applicants who wish to avail themselves of the services described in this subdivision.

SEC. 2. Section 273.6 of the Penal Code is amended to read:

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) In the event of a violation of subdivision (a) that results in physical injury, the person shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both that fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interest of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

1 (1) Any order issued pursuant to Section 6320 or 6389 of the
2 Family Code.

3 (2) An order excluding one party from the family dwelling or
4 from the dwelling of the other.

5 (3) An order enjoining a party from specified behavior that the
6 court determined was necessary to effectuate the order described
7 in subdivision (a).

8 (4) Any order issued by another state that is recognized under
9 Part 5 (commencing with Section 6400) of Division 10 of the
10 Family Code.

11 (d) A subsequent conviction for a violation of an order described
12 in subdivision (a), occurring within seven years of a prior
13 conviction for a violation of an order described in subdivision (a)
14 and involving an act of violence or “a credible threat” of violence,
15 as defined in subdivision (c) of Section 139, is punishable by
16 imprisonment in a county jail not to exceed one year, or in the
17 state prison.

18 (e) In the event of a subsequent conviction for a violation of an
19 order described in subdivision (a) for an act occurring within one
20 year of a prior conviction for a violation of an order described in
21 subdivision (a) that results in physical injury to a victim, the person
22 shall be punished by a fine of not more than two thousand dollars
23 (\$2,000), or by imprisonment in a county jail for not less than six
24 months nor more than one year, by both that fine and
25 imprisonment, or by imprisonment in the state prison. However,
26 if the person is imprisoned in a county jail for at least 30 days, the
27 court may, in the interest of justice and for reasons stated in the
28 record, reduce or eliminate the six-month minimum imprisonment
29 required by this subdivision. In determining whether to reduce or
30 eliminate the minimum imprisonment pursuant to this subdivision,
31 the court shall consider the seriousness of the facts before the court,
32 whether there are additional allegations of a violation of the order
33 during the pendency of the case before the court, the probability
34 of future violations, the safety of the victim, and whether the
35 defendant has successfully completed or is making progress with
36 counseling.

37 (f) The prosecuting agency of each county shall have the primary
38 responsibility for the enforcement of orders described in
39 subdivisions (a), (b), (d), and (e).

(g) (1) Every person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, shall be punished under subdivision (g) of Section 12021.

(2) Every person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (f) of Section 527.9 of the Code of Civil Procedure, or subdivision (h) of Section 6389 of the Family Code.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), (c), (d), or (e), the court shall impose probation consistent with Section 1203.097, and the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter or to a shelter for abused elder persons or dependent adults, up to a maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

1 SEC. 3. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution for certain
3 costs that may be incurred by a local agency or school district
4 because, in that regard, this act creates a new crime or infraction,
5 eliminates a crime or infraction, or changes the penalty for a crime
6 or infraction, within the meaning of Section 17556 of the
7 Government Code, or changes the definition of a crime within the
8 meaning of Section 6 of Article XIII B of the California
9 Constitution.
10 However, if the Commission on State Mandates determines that
11 this act contains other costs mandated by the state, reimbursement
12 to local agencies for those costs shall be made pursuant to Part 7
13 (commencing with Section 17500) of Division 4 of Title 2 of the
14 Government Code.